



Department of State
Local Government

PUBLIC MEETINGS & HEARINGS

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Meetings and Hearings, Defined

- **Public meeting:** The official convening of a public body for the purpose of conducting public business
- **Public body:** Entities consisting of two or more people that conduct public business and perform a governmental function
- **Public hearing:** An official proceeding of a governmental body or officer during which the public is accorded the right to be heard



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OPEN MEETINGS LAW

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Purpose and Intent

- Public Officers Law Article 7 § 100-111
- Meetings allow the public to listen and observe
- Subject to Open Meetings Law
 - Application review and other board business
 - "Work session" or "agenda meeting"
 - "Site visit" if a quorum has gathered to discuss application
 - *Riverkeeper v. Planning Board of the Town of Somers*
- Exempt from Open Meetings Law
 - Soliciting and receiving legal advice from review board's attorney
 - Attorney-client privilege

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Quorum

- Number of members needed to legally conduct business (convening meetings, hearings, voting, etc.)
- At least a majority of a fully constituted membership, including absences and vacancies



NY General Construction Law, Article 2 § 41

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Using Alternates to Achieve Quorum

Prepare for board member absences due to conflicts of interest:

- Appoint any number of alternates by local law or ordinance
- For other absences, supersede statute by local law
- Terms of office set by governing board, not state statute
- Serve at the call of board chair
- Subject to Public Officers Law, oath of office, and training

Legal Memorandum: "Alternate Members of Planning Boards and Zoning Boards of Appeals" <https://dos.ny.gov/legal-memorandum-lu06-alternate-members-county-and-local-planning-boards-and-zoning-boards-appeals>

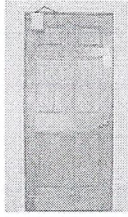
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Executive Session

Valid only for specific reasons under OML:

1. Public safety
2. Protect identity
3. Criminal investigations
4. Actual litigation
5. Collective negotiations
6. History of a person
7. Exams
8. Property value



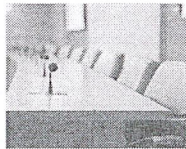
Public Officers Law,
Article 7, § 105-106

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Executive Session Procedure

- Portion of open meeting from which public may be excluded
- Pass motion to enter into executive session for stated purpose
- Close executive session and return to open meeting
- File minutes of actions taken in executive session within one week (Public Officers Law, Article 7 §106)



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Meeting Access Requirements

Open to "the public"

- Not limited to citizenship or residency
- Facility should adequately accommodate all
- Make reasonable efforts to permit barrier-free access to physically handicapped
- Public participation may be permitted but not required

Open to "the media"

- Open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted
- Adopt rules for equipment location and personnel as to conduct proceedings in an orderly manner
- Conspicuously post such rules during meetings and written copies upon request

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Meeting Notice Requirements

1. Provide time and date to media at least one week in advance (this is not publication as a legal notice)
2. Conspicuously post in designated public locations at least 72 hours in advance
3. Conspicuously post on municipal website where able
4. If videoconferencing, identify meeting locations; state public's right to attend meeting at any of those locations
5. If live streamlining online, include website URL to watch

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Remote Participation & Videoconferencing

Non-Public Locations

- OML § 103-a authorizes public bodies to adopt local law for Boards to participate & vote via videoconference in non-public location under "extraordinary circumstances" (undefined)
- Quorum required in public location(s)
- Public location(s) notice and access required

Public Locations

- Boards may participate via videoconferencing where they are seen, heard, AND their remote location is open to public (i.e.; member participates via videoconference in another state in public location)
- Remote public location(s) notice and access required
- No local law needed for this option

More info and model law: <https://opengovernment.ny.gov/>

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Record Disclosure Requirements

- As of November 2021: Agency records, as well as any proposed resolution, law, rule, regulation, policy or any amendment scheduled to be the subject of discussion during an open meeting shall be made available, upon request, to the extent practicable **at least 24 hours prior** to the meeting
- Copies may be made available for a reasonable fee or posted on a routinely updated municipal website to the extent practicable at least 24 hours prior to the meeting
- More info: <https://www.governor.ny.gov/news/governor-hochul-signs-two-pieces-legislation-boosting-transparency-state-and-local-government>

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MEETING PREPARATION AND PROCEDURE

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Applications

- Appoint an administrative official (formally or informally)
 - ZEO, municipal clerk, board clerk, etc.
- Good forms and communication
 - Include SEQR Environmental Assessment Form Part 1
 - Post on website
- Have clear submission requirements, include checklist
- Most approvals require a public hearing within 62 days of a "complete application"
 - Submission deadlines increase efficiency of review
- Ask applicant to provide extra copies of materials
 - County referral (if required): send immediately
 - Other municipal department heads of recommendations

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Organizing Meetings

- Reserve meeting room
 - Consider larger spaces for controversial applications
 - Arrange for equipment
- Confirm that members will attend
- Prepare agenda and distribute
- Invite experts and public officials



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- Format for meeting and presentations
 - Local rules of procedure may exist
- When and if questions or comments will be heard

Make all present aware of rules

[illegible]

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- Board may adopt procedures for recording that does not detract from the deliberative process
- Should not require permission or advance notice to record
- Absolute ban on recording is not reasonable
- Board member or public reluctance to be recorded is not appropriate reason to prohibit recording

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PUBLIC HEARINGS

Public Hearings

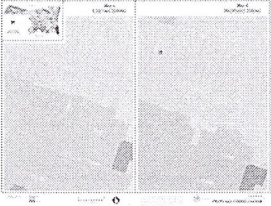
- Required for all matters before a ZBA
- Examples for planning boards include:
 - Subdivision
 - Special use permit
 - Preparation of preliminary comprehensive plan
 - Site plan (if required locally)

An official proceeding of a governmental body or officer during which the public is accorded the right to be heard

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When to Hold a Hearing



- When required by state statute, local law, or ordinance
- When considering a change to zoning or regulations
- Prior to determination of significance for SEQR (optional)
- When application or issue may be controversial
- When the board is looking for information about a parcel and feedback on a proposal

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Hearing Notice Requirements

- All noticing requirements for a public meeting under Open Meetings Law
- Legal notice in official newspaper
 - Generally, 5 days prior to hearing date
 - Adoption of and amendments to zoning regulations or comprehensive plans require 10 days advance notice

CONTENT OF NOTICE:

- Date, time & place
- Nature of proposed action
- Location of subject property, if applicable

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Hearing Notice Requirements

- Must mail notice to:
 - Applicant
 - Regional state park commission, if 500' from state park or parkway (ZBAs only)
 - Other agencies, if applicable:
 - GML § 239-m & GML §239-nn
- **No state statutes require direct mailing of notices to adjoining neighbors**

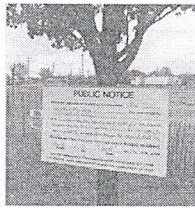


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Hearing Notice Requirements

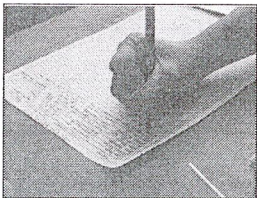
- Municipalities may adopt additional noticing requirements:
 - Signs on application property (best practice)
 - Mailings to neighbors
 - Municipal ListServ
- Municipal Home Rule Law § 20 allows local governments to vary notice requirements for hearings for local law adoption by that municipality



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Hearing Procedures



- Applicant's role at hearing
- Procedure for public comment
 - Order of speakers
 - Optional sign-up
 - Time allotted per speaker
- Addressing questions from the public
- Consequences for disruptive audience members
- Recording sessions

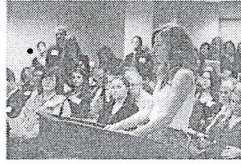
Outline "Rules of Procedure" to maintain order

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Hearing Tips

- Suggest speakers identify themselves (cannot require)
- Clarify to whom speaker is referring
- Beware of rustling paper or chatter near sensitive microphones
- Require visual references to be described or "read" into the record
- Let the public know what's next



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Closing the Hearing

- Hearing usually over when all who wish to speak are heard
 - Consider leaving hearing open if it is very late and additional people wish to speak
- After hearing closed, board may keep record open to accept written comments



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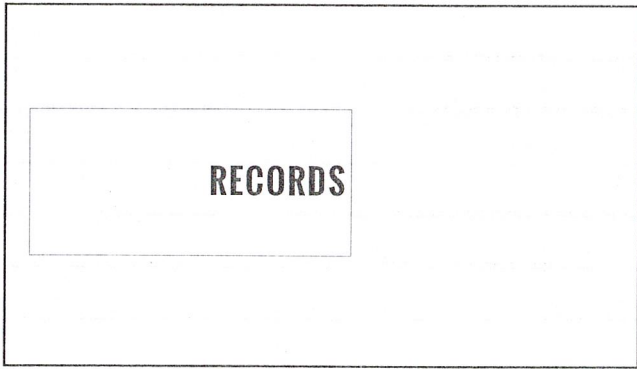
Adjournment and Continuation

- If board adjourns to UNSPECIFIED TIME and PLACE, then notice must be given in same manner as original notice
- If PRIOR to ADJOURNING, board ANNOUNCES time and place of continuing session, then public notice need not be given again



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Minutes are a Record

- Make available to the public
 - Regular meetings within two weeks
 - Executive sessions within one week
- If recording meeting, also take notes
- NYS Archives Records Retention Schedule
 - Official minutes permanently
 - Hearing proceedings permanently
 - Recordings four months after transcription or approval of minutes/proceedings

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Decision Document

Decision

- Date action taken
- Motion
- Vote cast by each board member
- Any conditions imposed

Locally establish what constitutes a "decision document"

- Resolution
- Minutes indicating vote on relevant motion
- Findings statement that includes decision
- Copy of applicant's decision letter

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Department of State

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Division of Local Government Services

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When can a meeting be closed?

(Excerpt from the Committee on Open Government publication *Your Right to Know*)

The law provides for closed or "executive" sessions under circumstances prescribed in the law. It is important to emphasize that an executive session is not separate from an open meeting, but rather is defined as a portion of an open meeting during which the public may be excluded.

To close a meeting for executive session, the law requires that a public body take several procedural steps. First, a motion must be made during an open meeting to enter into executive session; second, the motion must identify "the general area or areas of the subject or subjects to be considered;" and third, the motion must be carried by a majority vote of the total membership of a public body.

Further, a public body cannot close its doors to the public to discuss the subject of its choice, for the law specifies and limits the subject matter that may appropriately be discussed in executive session. The eight subjects that may be discussed behind closed doors include:

- (a) matters which will imperil the public safety if disclosed;
- (b) any matter which may disclose the identity of a law enforcement agency or informer;
- (c) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- (d) discussions regarding proposed, pending or current litigation;
- (e) collective negotiations pursuant to Article 14 of the Civil Service Law (the Taylor Law);
- (f) the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- (g) the preparation, grading or administration of examinations; and
- (h) the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

These are the only subjects that may be discussed behind closed doors; all other deliberations must be conducted during open meetings.

It is important to point out that a public body can never vote to appropriate public monies during a closed session. Therefore, although most public bodies may vote during a properly convened executive session, any vote to appropriate public monies must be taken in public.

The law also states that an executive session can be attended by members of the public body and any other persons authorized by the public body.

OML-AO-4028

August 25, 2005

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear [REDACTED]

I have received your letter and the memorandum relating to it. Please accept my apologies for the delay in response.

You indicated that the Hyde Park Town Board conducted an executive session that you did not attend, and when it reconvened in public, "the Supervisor announced that two (2) decisions were made." On the following day, you contacted the Town Attorney to request that he verify that a vote was taken during the executive session. He referred your inquiry to the attorney who was present and wrote that:

"No votes were taken in Executive Session. In both instances the Board simply confirmed decisions it had previously made."

You wrote that you "fail to understand what that answer means." I must admit that I do not understand it either. Nevertheless, I offer the following comments.

First, as you are aware, the Open Meetings Law contains direction concerning minutes of meetings and provides what might be viewed as minimum requirements pertaining to their contents. Specifically, §106 states that:

"1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session."

In view of the foregoing, as a general rule, a public body may take action during a properly convened executive session [see Open Meetings Law, §105(1)]. If action is taken during an executive session, minutes reflective of the action, the date and the vote must generally be

recorded in minutes pursuant to §106(2) of the Law. If no action is taken, there is no requirement that minutes of the executive session be prepared.

I point out that minutes of executive sessions need not include information that may be withheld under the Freedom of Information Law. From my perspective, when a public body makes a final determination during an executive session, that determination will, in most instances, be public. For example, although a discussion to hire or fire a particular employee could clearly be discussed during an executive session [see Open Meetings Law, §105(1)(f), a determination to hire or fire that person would be recorded in minutes and would be available to the public under the Freedom of Information Law. On other hand, if a public body votes to initiate a disciplinary proceeding against a public employee, minutes reflective of its action would not have include reference to or identify the person, for the Freedom of Information Law authorizes an agency to withhold records to the extent that disclosure would result in an unwarranted personal privacy such as unsubstantiated charges or allegations [see Freedom of Information Law, §87(2)(b)].

On occasion, public bodies have taken action by what has been characterized as "consensus." If a public body reaches a consensus upon which it relies, I believe that minutes reflective of decisions reached must be prepared and made available. In *Previdi v. Hirsch* [524 NYS 2d 643 (1988)], the issue involved access to records, i.e., minutes of executive sessions held under the Open Meetings Law. Although it was assumed by the court that the executive sessions were properly held, it was found that "this was no basis for respondents to avoid publication of minutes pertaining to the 'final determination' of any action, and 'the date and vote thereon'" (id., 646). The court stated that:

"The fact that respondents characterize the vote as taken by 'consensus' does not exclude the recording of same as a 'formal vote'. To hold otherwise would invite circumvention of the statute.

"Moreover, respondents' interpretation of what constitutes the 'final determination of such action' is overly restrictive. The reasonable intendment of the statute is that 'final action' refers to the matter voted upon, not final determination of, as in this case, the litigation discussed or finality in terms of exhaustion or remedies" (id. 646).

If the Board reached a "consensus" that is reflective of its final determination of an issue, I believe that minutes must be prepared that indicate its action, as well as the manner in which each member voted. I note that §87(3)(a) of the Freedom of Information Law states that: "Each agency shall maintain...a record of the final vote of each member in every agency proceeding in which the member votes." As such, members of public bodies cannot take action by secret ballot.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman
Executive Director

RJF:tt

OML-AO-4506

October 30, 2007

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear [REDACTED]

I have received your letter in which you inferred that the board of education in the school district in which you reside fails to comply with the Open Meetings Law by holding "so-called work sessions at which motions, votes are taken, contracts are discussed, and there is no counsel or district clerk present - ever."

In this regard, based on the judicial interpretation of the Open Meetings Law, there is no legal distinction between a "meeting" and "work session."

By way of background, it is noted that the definition of "meeting" has been broadly interpreted by the courts. In a landmark decision rendered in 1978, the Court of Appeals, the state's highest court, found that any gathering of a quorum of a public body, such as a board of education, for the purpose of conducting public business is a "meeting" that must be convened open to the public, whether or not there is an intent to take action and regardless of the manner in which a gathering may be characterized [see Orange County Publications v. Council of the City of Newburgh, 60 AD 2d 409, aff'd 45 NY 2d 947 (1978)].

I point out that the decision rendered by the Court of Appeals was precipitated by contentions made by public bodies that so-called "work sessions" and similar gatherings held for the purpose of discussion, but without an intent to take action, fell outside the scope of the Open Meetings Law. In discussing the issue, the Appellate Division, whose determination was unanimously affirmed by the Court of Appeals, stated that:

"We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to formal action. Formal acts have always been matters of public record and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire decision-making process that the Legislature intended to affect by the enactment of this statute" (60 AD 2d 409, 415).

The court also dealt with the characterization of meetings as "informal," stating that:

"The word 'formal' is defined merely as 'following or according with established form, custom, or rule' (Webster's Third New Int. Dictionary). We believe that it was inserted to safeguard the rights of members of a public body to engage in ordinary social transactions, but not to permit the use of this safeguard as a vehicle by which it precludes the

application of the law to gatherings which have as their true purpose the discussion of the business of a public body" (id.).

Based upon the direction given by the courts, if a majority of a public body gathers to discuss public business, any such gathering, in my opinion, would ordinarily constitute a "meeting" subject to the Open Meetings Law. Since a work session held by a majority of a public body is a "meeting", it would have the same responsibilities in relation to notice and the taking of minutes as in the case of a formal meeting, as well as the same ability to introduce motions, to vote and to enter into executive sessions when appropriate .

With respect to minutes of "work sessions", as well as other meetings, the Open Meetings Law contains what might be viewed as minimum requirements concerning the contents of minutes. Specifically, §106 of the Open Meetings Law states that:

- "1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.
3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session."

Based upon the foregoing, it is clear in my view that minutes need not consist of a verbatim account of what was said at a meeting; similarly, there is no requirement that minutes refer to every topic discussed or identify those who may have spoken. Although a public body may choose to prepare expansive minutes, at a minimum, minutes of open meetings must include reference to all motions, proposals, resolutions and any other matters upon which votes are taken. If those kinds of actions, such as motions or votes, do not occur during work sessions, technically, I do not believe that minutes must be prepared. On the other hand, if motions are made or actions taken, those activities must be memorialized in minutes.

I hope that the foregoing serves to clarify your understanding and that I have been of assistance.

RJF:tt

OML-AO-3812

June 2, 2004

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear [REDACTED]

As you are aware, I have received your letter. Please accept my apologies for the delay in response.

You wrote that the Clerk in the Village of Forestville has suggested that the Board is required only "to put [notice of meetings] in the paper once a year since the meeting where held [sic] at the same time every month." You asked whether that is proper, and whether notice must be given prior to "workshops."

In this regard, I offer the following comments.

First, I do not believe that there is any legal distinction between a "workshop" and a "meeting." By way of background, the definition of "meeting" [see Open Meetings Law, §102(1)] has been broadly interpreted by the courts. In a landmark decision rendered in 1978, the Court of Appeals, the state's highest court, found that any gathering of a majority of a public body for the purpose of conducting public business is a "meeting" that must be conducted open to the public, whether or not there is an intent to have action and regardless of the manner in which a gathering may be characterized [see *Orange County Publications v. Council of the City of Newburgh*, 60 Ad 2d 409, aff'd 45 NY 2d 947 (1978)].

The decision rendered by the Court of Appeals was precipitated by contentions made by public bodies that so-called "work sessions" and similar gatherings held for the purpose of discussion, but without an intent to take action, fell outside the scope of the Open Meetings Law. In discussing the issue, the Appellate Division, whose determination was unanimously affirmed by the Court of Appeals, stated that:

"We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to formal action. Formal acts have always been matters of public record and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire decision-making process that the Legislature intended to affect by the enactment of this statute" (60 AD 2d 409, 415).

The court also dealt with the characterization of meetings as "informal," stating that:

"The word 'formal' is defined merely as 'following or according with established form, custom, or rule' (Webster's Third New Int. Dictionary). We believe that it was inserted to safeguard the rights of members of a public body to engage in ordinary social transactions, but not to permit the use of this safeguard as a vehicle by which it precludes the application of the law to gatherings which have as their true purpose the discussion of the business of a public body" (id.).

Based upon the direction given by the courts, when a majority of the Board convenes to discuss the Village business, any such gathering, in my opinion, would constitute a "meeting" subject to the Open Meetings Law, even if it is characterized as a "workshop."

Second, the Open Meetings Law requires that notice be given to the news media and posted prior to every meeting. Specifically, §104 of that statute provides that:

"1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before each meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice."

Stated differently, if a meeting is scheduled at least a week in advance, notice of the time and place must be given to the news media and to the public by means of posting in one or more designated public locations, not less than seventy-two hours prior to the meeting. If a meeting is scheduled less than a week in advance, again, notice of the time and place must be given to the news media and posted in the same manner as described above, "to the extent practicable", at a reasonable time prior to the meeting. Therefore, if, for example, there is a need to convene quickly, the notice requirements can generally be met by telephoning the local news media and by posting notice in one or more designated locations.

In the context of your inquiry, if a series of meetings have been scheduled in advance to be held at particular times, the posting of a notice of a schedule of those meetings in a conspicuous public location and transmittal of that notice once to the news media would in my view satisfy §104 of the Open Meetings Law regarding those meetings. The only instances in which additional notice would be required would involve unscheduled meetings that are not referenced in the notice.

Therefore, if, for instance, the Board of Trustees, establishes at its organizational meeting that formal meetings will be held on the second Thursday of each month at 7 p.m. in Village Hall, and that workshop meetings will be held on the fourth Thursday of each month at 7 p.m. in Village Hall, and if notice containing that information is posted continuously and transmitted once to the local news media, I believe that the board would satisfy the notice requirements imposed by the Open Meetings Law. Again, the only additional notice would involve unscheduled meetings. I point out, too, that although notice of meetings must be given to the news media, there is no requirement that the news media print or publicize that a meeting will be held.

I hope that I have been of assistance.

RJF:tt

cc: Board of Trustees